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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 23.11.2020

+ W.P.(C) 9111/2020

DIVYA BANSAL

..... Petitioner

Through: Mr. S.S. Dahiya and Ms. Nisha
Dahiya, Advocates

versus

UNIVERSITY OF DELHI,
THROUGH ITS REGISTRAR

..... Respondent

Through: Mr. Amit Bansal and Ms. Seema
Dolo, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

This hearing is conducted through Video-Conferencing.

CM APPL. 29431/2020

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 9111/2020 & CM APPL. 29430/2020

1. This writ petition is filed seeking following relief:-

“(i) Issue a writ in the nature of Certiorari to quash the impugned order/Letter dated 3-11-2020 and also quash the option of opted out by petitioner dated 26-10-2020 of Gargi College.

(ii) And direct the respondent to allow the further

upgradation of name of petitioner to be considered in the next round of counselling as and when conducted by the respondent.”

2. The case of the petitioner is that she applied for the entrance test in the course of B.El.Ed. (four year Integrated Course) with the respondent and successfully passed the entrance test ranked at serial no.41 under unreserved category. There are total 8 colleges working under the respondent. The petitioner gave the first preference as Miranda House, second preference as Lady Shri Ram College for Women and the third preference as Gargi College. It is pleaded that as per Rules, if a candidate is allotted a seat on the basis of best preference, then she will not be allowed to change to a lower preference in a category. However, the Rules also provide that a successfully admitted candidate/student will automatically be considered for upgradation in the subsequent rounds of counselling

3. On 27.10.2020 in the first round of counselling, petitioner's name appeared in Gargi College. Inadvertently due to computerized/digital problem the push button of Gargi College was pressed which opted out the petitioner from second round of counselling. It is the grievance of the petitioner that the candidate whose rank was below the petitioner, i.e. even her own sister who has ranked at serial no.59 got admission to Lady Shri Ram College for Women. The petitioner immediately realised her mistake but there was no mechanism to correct the mistake committed by pressing the button of opting out. Hence, the present writ petition.

3. I have heard learned counsel for the parties. Learned counsel for the petitioner vehemently urges that on merit the petitioner is entitled to admission to Lady Shri Ram College for Women. There is only a bonafide

mistake in the present COVID time as the petitioner by mistake pressed the wrong button. The petitioner should not be penalized for the same.

4. In this context, reference may be had to the brochure issued for B.El.Ed (Bachelor of Elementary Education) issued by University of Delhi.

Reference may be had to the relevant clauses:-

“5.2.3. Verification of required documents along with admission form of the shortlisted candidates will occur online within the stipulated period of time, as per the counselling schedule announced/ available on the Admission Portal. Once the College approves the admission of the candidate online, a fee link will be activated in the candidate’s portal. The candidate must pay the fee online within the stipulated time, failing which her allotted seat will automatically be cancelled. Kindly refer to the schedule specified by University of Delhi given in Bulletin of Information for undergraduate courses.

5.2.4. A candidate shall be declared as a successfully admitted candidate only after payment of the fee.

5.2.5. Based on the number of candidates admitted successfully, the vacant seats will be available for 2nd round of counselling.

5.2.6. The successfully admitted students will be automatically considered for upgradation in the subsequent round of counselling. They may have the option to opt out from upgradation at the time of fee payment.

5.2.7. The following categories of candidates will not be considered in the subsequent round of counselling:

a. Candidates who have already been allotted their first preference.

b. Candidates who have voluntarily opted out of upgradation.

c. Candidates whose names appear in provisional admission list but did not pay the fees within the stipulated period of time.

5.3 Second Round of Counselling

The candidate will be automatically considered for upgradation (in case she has not been allotted the first preference filled by her), until and unless she opted out from the process of upgradation.

5.6. Spot Round of registered candidates (subject to availability of seats)

Spot Round

- Considering the pandemic conditions due to COVID-19, spot admissions may or may not be held.
- The Spot Round of admission will only be conducted if there will be vacant seats in all the colleges after upgradation, if any, for the registered candidates (this would be applicable within the category). No fresh registration is allowed. For further details of the spot round of admissions, applicants are required to visit website of Department of Education, University of Delhi regularly.”

5. Perusal of the aforesaid clauses clearly shows that candidates will be automatically considered for upgradation (in case she has not been allotted the first preference filled by her) unless she has opted out from the process of upgradation. Admittedly, in the present case, the petitioner has opted out from the process of upgradation by pressing the appropriate button. Hence, in terms of the stipulated regulations noted above, petitioner could not participate in the second round of counselling.

6. It has been strenuously urged that this was a bonafide mistake and the petitioner should not be penalised. It is a settled legal position that mistakes in these facts cannot be condoned or given a go-bye. Such a procedure will create chaos.

7. Reference in this context may be had to the judgment in the case of ***Ujjwal Tripathi vs. Director General National Testing Agency, 2019 SCC OnLine Del. 8702***. That was also a case where a student belonging to EWS was treated by the National Testing Agency which conducts JEE (Mains) as a general category candidate. The Court held as follows:-

“14. Even if this were to be taken as an inadvertent act on the part of the petitioner, this Court cannot be oblivious of the fact that the JEE (Advanced) Examination is a humongous exercise, which involves lakhs of students and, if courts are to interfere in such matters, treating the change of category as inadvertent, or as an accidental slip on the part of candidate, a Pandora’s box would inevitably be opened.

15. Candidates who apply for such examinations are required to be vigilant and ensure that they are circumspect while applying, and while making entries, especially where the entire process of application, as is this case, takes place online

16. Mr. Shukla requests this Court to take a sympathetic view of the matter, as, in his submission, if the petitioner is not allowed to appear in the JEE (Advanced) Examination, he would lose his chance to secure higher education in the IITs.

17. This Court sympathises with the situation in which the petitioner finds himself, but expresses its

inability to come to his aid.”

8. The above position was reiterated by this Court in the case of *Sushma Ambati vs Ministry of Education & Anr.* in W.P.(C) 7767/2020 dated 03.11.2020.

9. Hence, it is clear that the facts of the above judgement are clearly applicable to this case. The petitioner has inadvertently pushed a button and opted out from the second round of counselling. The petitioner cannot now be permitted to wriggle out of her inadvertent mistake. Any such order by this Court will create needless chaos.

10. There is no merit in the petition and the same is dismissed.

NOVEMBER 23, 2020
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JAYANT NATH, J